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8 Attorneys for Plaintiff
ExamWorks, LLC

9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12 SACRAMENTO DIVISION

13 EXAMWORKS, a Delaware limited liability
14 company,

15 Plaintiff,

16 v.

17 TODD BALDINI, an individual, ABYGAIL
BIRD, an individual, LAWRENCE STUART
18 GIRARD, an individual, PAMELLA TEJADA,
an individual, ROE CORPORATION, and
19 DOES 1 through 10,

20 Defendants.

Case No. 2:20-CV-00920-KJM-DB

**SECOND STIPULATION/
STATEMENT OF NON-OPPOSITION
AND ORDER TO AMEND RULE 16
SCHEDULING ORDER DUE TO
THIRD PARTY DISCOVERY**

Judge: Hon. Kimberly J. Mueller
Place: Courtroom 3, 15th floor

1 Plaintiff ExamWorks, LLC (“ExamWorks”) respectfully submits the following second
2 stipulation and proposed order, requesting the Court continue the deadline for joinder of third
3 party and fact discovery deadline as to third-parties Integrated Pain Management (“IPM”) and
4 William George (collectively “IPM Parties”) only. Currently, the deadline for joinder of
5 additional parties is December 10, 2020 and fact discovery closes on December 28, 2020. ECF
6 No. 104; ECF No. 87. As to third parties other than the IPM Parties and as to the parties in this
7 action, ExamWorks does not request any continuance for joinder or fact discovery. However, the
8 IPM Parties and ExamWorks entered into an extensive forensic inspection protocol, which will
9 not be completed by December 10, 2020. Accordingly, ExamWorks requests a 35-day
10 continuance of the joinder deadline from December 10 to January 14, 2021 and a 17-day
11 continuance of the fact discovery cut-off from December 28 to January 14, 2021 to allow
12 ExamWorks to complete discovery and settlement negotiations with the IPM Parties in order to
13 avoid, to the extent possible, adding additional parties to this lawsuit. As a result of the requested
14 continuance as to the IPM Parties, ExamWorks also requests that the deadlines associated with
15 expert discovery and the hearing of dispositive motions as to all parties are also continued 30
16 additional days.

17 Previously, the Court granted the parties’ stipulation and proposed order to amend the
18 scheduling order to continue the joinder deadlines as to third parties until December 10, 2020.
19 ECF No. 104. Since the Court’s entry of the stipulation, ExamWorks has diligently pursued
20 discovery as to the third parties. ExamWorks anticipates meeting the December 10 joinder
21 deadline as to third parties Dr. Steven Feinberg, Dunamis Alliance, James Tuthill, and Trisha
22 Tuthill. However, as to the IPM Parties, ExamWorks requires additional time. ExamWorks
23 entered into a lengthy forensic inspection protocol with the IPM Parties, which directed a jointly-
24 retained forensic neutral to preserve, collect, and produce documents, provide forensic opinions,
25 and remediate ExamWorks’ confidential documents. There have been unanticipated technical
26 issues with the completion of the forensic protocol, which will require additional time for the
27 protocol to complete. As a result, ExamWorks will not have the benefit of a completed forensic
28 inspection before the December 10 joinder deadline; ExamWorks will also be unable to depose

1 the IPM Parties prior to the joinder deadline. The IPM Parties and ExamWorks are working
2 together in good faith to complete the forensic inspection efficiently, but ExamWorks require a
3 short continuance to allow: (i) the forensic neutral to complete the forensic inspection and
4 production of documents; (ii) ExamWorks sufficient time to review the produced documents and
5 the forensic neutral's reports, and complete the depositions of the IPM Parties; and (iii) to provide
6 sufficient time for the IPM Parties and ExamWorks to see if a potential resolution may be reached
7 without having to add the IPM Parties to the litigation.

8 The requested continuance of the joinder and fact discovery deadlines are to the IPM
9 Parties only. ExamWorks is not requesting a continuance as to the joinder deadline or as to fact
10 discovery cut-off for any other party or third parties other than the IPM Parties. However, due to
11 the requested continuance of deadlines related to the IPM Parties, ExamWorks further requests
12 that the expert discovery and dispositive motion hearing deadlines currently set in the case
13 schedule are continued by 30 days since the discovery of the IPM Parties will likely impact the
14 disclosure of expert opinions.

15 Defendants Todd Baldini, L. Stuart Girard, and Abygail Bird stipulate to the relief
16 requested.

17 Defendant Pamela Tejada does not oppose ExamWorks' requested relief but takes no
18 position with respect to the contents of this motion or the representations made herein.

19 **A. Background**

20 This action arises out of Defendants' prior employment with ExamWorks. In Spring
21 2020, Defendants Girard and Tejada resigned from ExamWorks. In the course of investigating
22 their departures, ExamWorks came to believe that they had taken significant information related
23 to ExamWorks' business, including information that ExamWorks considers to be its trade secrets.
24 Defendants Baldini's and Bird's employment was terminated shortly thereafter. This action was
25 filed on May 4, 2020 (ECF No. 1), and on May 8, 2020, the Court granted ExamWorks' motion
26 and issued a Temporary Restraining Order and Order to Show Cause and ordered expedited
27 discovery (ECF No. 17). On June 3, 2020, the Court granted ExamWorks' motion for
28 Preliminary Injunction. ECF No. 45.

1 In connection with the Rule 16 scheduling conference held on August 20, 2020,
 2 ExamWorks alerted the Court that ExamWorks planned to take third-party discovery of certain
 3 business entities affiliated with Defendants. ECF No. 86 (Jnt. Rpt.) at 8. ExamWorks contends
 4 that the relevant third parties, including Steven Feinberg, James Tuthill, William George, Trisha
 5 Tuthill, Dunamis Alliance LLC (“Dunamis”), and/or IPM were all connected in one way or
 6 another with Defendants’ departure from ExamWorks and were connected to a scheme to
 7 misappropriate ExamWorks’ trade secrets. *See also* ECF No. 39 (Supp. Br.) at 2–5 (setting forth
 8 ExamWork’s position and evidence that the identified third parties were connected with a venture
 9 planned by Defendants). A significant purpose of taking third-party discovery was to determine
 10 what, if any, ExamWorks information was misappropriated by third parties so that it could be
 11 returned to ExamWorks. Suppl. Decl. of Catherine Y. Lui (“Suppl. Lui Decl.”), filed
 12 concurrently herewith, ¶ 2.

13 **B. ExamWorks Diligently Pursued Information from Third Parties.**

14 As discussed in the parties’ first Stipulation and Proposed Order to Amend Scheduling
 15 Order (hereinafter “First Stipulation”), ECF No. 100, ExamWorks diligently pursued third party
 16 discovery from Dunamis, the Tuthills, Dr. Feinberg, and the IPM Parties. ExamWorks
 17 incorporates by reference pages two through four of its First Stipulation as if stated herein. *See*
 18 ECF No. 100 at 2-4. As to Dr. Feinberg, Dunamis, and the Tuthills, ExamWorks anticipates that
 19 it will be able to meet the December 10 joinder deadline to complete discovery and finish the
 20 evaluation of whether it will join these third parties to the action. Suppl. Lui Decl. ¶ 3.

21 As to the IPM Parties—as discussed in the First Stipulation—ExamWorks and the IPM
 22 Parties were conferring on an extensive forensic inspection protocol to collect, preserve, and
 23 produce documents responsive to ExamWorks’ subpoenas to the IPM Parties, and to remediate
 24 ExamWorks’ trade secrets and confidential information from the IPM Parties’ electronic devices
 25 and accounts after ExamWorks’ review of the documents. ECF No. 100-1 ¶ 3; Suppl. Lui Decl. ¶
 26 4.

27 At the time of the filing of the First Stipulation on October 9, 2020, ExamWorks
 28 anticipated finalizing the forensic protocol with the IPM Parties in October 2020. ECF No. 100-1

¶ 3. ExamWorks and the IPM Parties agreed to the forensic protocol in principle on October 15, 2020, and began discussions with the parties' jointly-selected forensic neutral, Michael Bandemer of Berkeley Research Group, on October 20, 2020. Suppl. Lui Decl ¶ 4; Decl. of J. Maxwell Cooper ("Cooper Decl."), filed concurrently herewith, ¶ 3. The protocol requires the forensic neutral to collect, preserve, inspect, and produce documents from 13 custodians' IPM email accounts, their associated IPM cloud accounts, Mr. George's personal email account, and the custodians' computers. Suppl Lui Decl. Ex. A at 9-14. In the protocol, the parties negotiated a set of search terms and an expedited time frame for the IPM Parties to review and produce responsive documents. *Id.* Ex. A at 5-6, 9-14. As a result, there are 43 total accounts, devices, or repositories that the forensic neutral will have to collect, process, search, and inspect. Suppl. Lui Decl., Ex. B at 5-6.

Since October 15, the IPM Parties began working with IPM's IT department in managing the logistics of providing 13 computers—including the computers for 11 current employees—for inspection. Cooper Decl. ¶¶ 3-4. These custodians live in different parts of California as well as Portland, Oregon. *Id.* ¶ 3. The coordination of these devices for preservation and collection has been made more difficult by the Covid-19 pandemic as in-person collection has not been possible for all of these custodians. *Id.* ¶ 4. While the forensic collection and inspection is currently underway, there have been some unanticipated delays in the forensic process.

It took the IPM Parties a few weeks to produce the majority of the computers and accounts for forensic inspection as there were difficulties in managing the logistics for this effort, particularly during a pandemic and in finding acceptable solutions to minimize the burden to the IPM employees to be without their work computers for some time. Cooper Decl. ¶¶ 3-4. Originally, the IPM Parties were going to produce the laptops for collection at their offices in Walnut Creek, California on November 17 and 18, 2020 because most of the custodians were gathering for a meeting then. *Id.* ¶ 4. ExamWorks expressed concern that these dates were too much delay for the collection of the custodians' computers and urged the IPM Parties to provide the laptops at an earlier date. *Id.*; Suppl Lui Decl. ¶ 6. The IPM Parties began providing laptops for collection on November 10-12. Cooper Decl. ¶ 4. In addition, there have been custodians'

1 personal files that had to be remotely collected and the forensic neutral was unable to properly
2 collect the Mac laptop of one custodian and had to re-collect the laptop on November 23-24. *Id.*

3 The IPM Parties provided the forensic neutral with the proper set of credentials for
4 collection of IPM's Office 365 emails on November 5. Cooper Decl. ¶ 5. After the collection of
5 the email accounts, the forensic neutral ran search terms on the email accounts and informed the
6 parties that some search terms were producing voluminous search results. Suppl. Lui Decl. ¶ 7;
7 Cooper Decl. ¶ 5. As a result, further investigation by the forensic neutral was required, and the
8 parties conferred to edit the search terms to limit the search term results to a reasonable set of
9 potentially responsive documents. Suppl. Lui Decl. ¶ 7; Cooper Decl. ¶ 5. Per the protocol, the
10 search term results are produced first to the IPM Parties so that they may review the results for
11 privilege, confidentiality, and responsiveness (depending on the custodian), and then the IPM
12 Parties will instruct the forensic neutral to release the non-privileged documents to ExamWorks
13 for review. Suppl. Lui Decl. ¶ 7; *see also id.* Ex. A at §8(2); Cooper Decl. ¶ 6.

14 On November 17, 2020, the forensic neutral produced more than 30,000 documents to the
15 IPM Parties for their review. Suppl. Lui Decl. Ex. B at 5; Cooper Decl. ¶ 6. Per the protocol, the
16 IPM Parties are to produce non-privileged documents from Defendants Todd Baldini and Stuart
17 Girard's accounts to ExamWorks within one week and within 17 days for the remaining 11
18 custodians. Suppl. Lui Decl. Ex. A at §8(2); Cooper Decl. ¶ 6. However, during the course of the
19 IPM Parties' review, they discovered that the forensic neutral did not collect documents from the
20 custodian's OneDrive cloud accounts due to an error in the credentials provided to the neutral; the
21 forensic neutral later collected these accounts and will provide updated search results to the IPM
22 Parties for their review. Cooper Decl. ¶ 6; Suppl. Lui Decl. Ex. B at 5-6. In addition, there was a
23 mistake where emails and attachments to emails were not always produced to the IPM Parties.
24 Cooper Decl. ¶ 6. As a result, the IPM Parties are producing certain documents related to
25 Defendants Baldini and Girard one day late, and may need additional time to produce documents
26 for the remaining custodians within the time allotted for by the protocol. *Id.*

27 The forensic expert is also continuing to produce documents to the IPM Parties for review
28 from additional devices and accounts. Cooper Decl. ¶ 6. Currently, the total number of

documents is more than 50,000 for the IPM Parties to review. *Id.*; Suppl. Lui Decl. Ex. B at 5-6. There are still over 20 accounts, devices, and repositories that are being searched and the document results have not yet been produced to the IPM Parties. Cooper Decl. ¶ 6; Suppl. Lui Decl. Ex. B at 5-6.

In addition, the forensic neutral has not yet provided any documents produced from the OneDrive cloud accounts for the IPM custodians as those accounts are still being processed. Suppl. Lui Decl. Ex. B at 5-6. Further, the protocol calls for the forensic neutral to inspect the devices and provide opinions as to any potential spoliation and whether any devices or accounts that may contain responsive information were not produced; the forensic neutral has also yet to provide forensic opinions as to any of the computers. Suppl. Lui Decl. Ex. A at ¶ 1; *id.* Ex. B at 3. The forensic neutral anticipates providing the remainder of the documents to the IPM Parties for review by November 28. Suppl. Lui Decl. Ex. B at 3; Suppl. Lui Decl. ¶ 8. Because the IPM Parties have to first review the documents before allowing the forensic neutral to produce those documents to ExamWorks, the forensic protocol will not be completed before the December 10, 2020 joinder deadline. Suppl. Lui Decl. ¶ 8.

In sum, while ExamWorks and the IPM Parties have been working in good faith to timely finish the forensic inspection protocol, the full forensic inspection and production will not be completed by December 10. Suppl. Lui Decl. ¶ 8; Cooper Decl. ¶ 6. And ExamWorks will not be able to conduct the depositions of Mr. George and IPM until after it finishes its review of the documents produced by the IPM Parties and the reports by the forensic neutral. Suppl. Lui Decl. ¶ 8. As a result of the delays and the time it will take to complete the forensic inspection of the IPM Parties, the IPM Parties have agreed to produce Mr. George and the IPM corporate representative for deposition in early January; the IPM Parties further do not object to ExamWorks seeking this continuance of the joinder deadline. Cooper Decl. ¶ 7; Suppl. Lui Decl. ¶ 9. Both ExamWorks and the IPM Parties anticipate discussing potential resolution of any potential litigation after the completion of the depositions. Cooper Decl. ¶ 7; Suppl. Lui Decl. ¶ 9. In addition, the Defendants have stipulated to this relief as well.

As outlined above, ExamWorks has diligently sought information and discovery necessary

1 to determine whether they need to be added as defendants. However, before ExamWorks can
 2 make an informed decision as to joining the IPM Parties to the suit, it must have complete
 3 document productions, the forensic neutral's opinions, and depositions of the IPM Parties. In
 4 order to provide sufficient time to make a final determination, ExamWorks respectfully requests
 5 an extension of the deadline to join parties as to the IPM Parties so that its discovery of and the
 6 negotiations with the IPM Parties can be completed.

7 **II. LEGAL STANDARD**

8 The Court may upon a showing of good cause amend a Rule 16(b) scheduling order. Fed.
 9 R. Civ. P. 16(b)(4). "Good cause may be found to exist where the moving party shows that it
 10 diligently assisted the court with creating a workable scheduling order, that it is unable to comply
 11 with the scheduling order's deadlines due to matters that could not have reasonably been foreseen
 12 at the time of the issuance of the scheduling order, and that it was diligent in seeking an
 13 amendment once it became apparent that the party could not comply with the scheduling order."
 14 *Kuschner v. Nationwide Credit, Inc.*, 256 F.R.D. 684, 687 (E.D. Cal. 2009).

15 **III. GOOD CAUSE EXISTS TO MODIFY THE RULE 16 ORDER**

16 ExamWorks participated in the initial case management conference and proposed a
 17 schedule jointly with Defendants that the Court largely adopted. ECF No. 86 (Jnt. Rpt.) at 11–12;
 18 ECF No. 87 (Scheduling Order). *Kuschner*, 256 F.R.D. at 688 (finding that participation in the
 19 scheduling conference and proposal of a schedule satisfies the first prong of the good cause
 20 inquiry). As discussed in the First Stipulation, at the time of the scheduling conference,
 21 ExamWorks was in active discussions with counsel for IPM, George, Dunamis, and the Tuthills
 22 and anticipated resolving documentary discovery issues in a matter of weeks. ECF No. 100 at 2-
 23 4; ECF No. 100-1 ¶¶ 3–4, 6. The October 31, 2020, deadline was proposed in good faith as a
 24 reasonable estimate of the amount of time necessary to complete ExamWorks' discussions with
 25 and investigation of third parties. When it became clear that ExamWorks required more time for
 26 third party discovery due to a number of unforeseen circumstances, ExamWorks timely sought
 27 relief to continue the October 31 joinder deadline to December 10, 2020. *See* ECF No. 100. The
 28 Court granted the stipulation on October 22, 2020. ECF No. 104.

1 Since the Court's order granting the First Stipulation, ExamWorks is on track to meet the
2 December 10 joinder deadline as to Dunamis, the Tuthills, and Dr. Feinberg. Suppl. Lui Decl. ¶
3 3. However, ExamWorks requests an additional short continuance for the joinder deadline and
4 fact discovery cut-off as to the IPM Parties only due to a number of unanticipated technical
5 difficulties that have slowed the completion of the forensic protocol.

6 First, it took the IPM Parties until November 10 to deliver most of the laptops for forensic
7 imaging and forensic imaging of all the computers did not finish until November 24. Cooper
8 Decl. ¶¶ 3-4; Suppl. Lui Decl. Ex. B at 5-6. Second, some search terms produced voluminous
9 results and the parties had to confer to edit the search terms. Suppl. Lui Decl. ¶ 7. That resulted
10 in additional delay and the forensic neutral did not produce the initial search term results of the 13
11 custodians' email accounts to the IPM Parties for review until November 17. Suppl. Lui Decl. ¶
12 7; Cooper Decl. ¶¶ 5-6.

13 Third, the forensic neutral had to collect additional accounts and correct certain technical
14 errors. During the course of the review, the IPM Parties discovered that there were missing
15 emails and attachments, which the forensic neutral resolved. Cooper Decl. ¶ 6; Suppl. Lui Decl
16 Ex. B at 3. Further, the parties discovered that due to an error in credentials provided to the
17 forensic neutral, the forensic neutral had not collected the OneDrive accounts for these 13
18 custodians. Cooper Decl. ¶ 6. As a result, there will be additional processing, searching, and
19 producing of documents from these accounts. *Id.* Due to these unanticipated technical issues, the
20 IPM Parties may not be able to produce the documents to ExamWorks on the deadlines required
21 by the forensic protocol and one production will be at least one day late. *Id.* Fourth, the forensic
22 neutral is still processing the majority of the computers and the OneDrive cloud accounts and has
23 not yet provided any forensic opinions about the computers. Suppl. Lui Decl. Ex. B at 3; 5-6.
24 Currently, none of the OneDrive accounts have been processed or searched for documents.
25 Suppl. Lui Decl. Ex. B at 3; 5-6. While the forensic neutral may finish the production of
26 documents to the IPM Parties by November 28 or earlier, when the forensic neutral produces
27 those documents to the IPM Parties, ExamWorks must wait until the IPM Parties complete their
28 review of documents before the forensic neutral may produce non-privileged documents to

ExamWorks. Suppl. Lui Decl. ¶ 8. As a result, the forensic protocol will not be completed by December 10. *Id.*

ExamWorks is also diligent in seeking a modification to the scheduling order. This request is being made weeks before the December 10, 2020 deadline expires and the joinder and fact discovery requested relief is limited to the IPM Parties only. When it became apparent that the deadline was implicated by events arising by the forensic protocol, ExamWorks obtained Defendants' stipulation and sought to amend the order weeks before the deadline expired. Suppl. Lui Decl. ¶ 10. *See Hood v. Hartford Life & Acc. Ins. Co.*, 567 F. Supp. 2d 1221, 1226 (E.D. Cal. 2008) (finding good cause where the party seeking modification moved quickly to obtain a stipulation and seek modification of the scheduling order). Additionally, the purpose of extending the deadline is not to delay or otherwise prolong the litigation, but rather to resolve potential claims against third parties without requiring litigation. *See Nelson v. Bennett*, 662 F. Supp. 1324, 1334 (E.D. Cal. 1987) (recognizing an "overriding public interest in settling and quieting litigation"). After review of the document productions and the depositions of the IPM Parties, ExamWorks will confer with the IPM Parties to see if a potential resolution can be reached outside of litigation. Suppl. Lui Decl. ¶ 9; Cooper Decl. ¶ 7. Resolving third-party claims outside formal litigation will also expedite resolution of this case by streamlining the issues, limiting the number of parties, and allowing ExamWorks and Defendants to focus on resolving their disputes in an expeditious manner.

Because ExamWorks' requested relief as to the IPM Parties does impact fact discovery, ExamWorks also seeks a 30-day continuance of all expert discovery and dispositive motion deadlines. The IPM Parties will likely provide discovery that ExamWorks' experts will reply upon for their opinions, and therefore, a continuance of those deadlines is required. Suppl. Lui Decl ¶ 10. The below table demonstrates the new deadlines from ExamWorks' requested relief:

Event	Current Deadline	Requested New Deadline
Joinder of Additional Parties	December 10, 2020	January 14, 2021 as to the IPM Parties only
Fact Discovery Cut-Off	December 28, 2020	January 14, 2021 as to the IPM Parties only
Expert Disclosures	January 11, 2021	February 10, 2021 as to all

		parties
Rebuttal Expert Witnesses	February 1, 2021	March 3, 2021 as to all parties
Expert Discovery Cut-Off	February 19, 2021	March 22, 2021 as to all parties
Last day for hearing all dispositive motions, except for motions for continuances, temporary restraining orders or other emergency applications	May 7, 2021	June 7, 2021 as to all parties

IV. CONCLUSION

For the foregoing reasons, ExamWorks respectfully requests that the Court extend the deadline to join the IPM Parties from December 10, 2020 to January 14, 2021. ExamWorks further requests fact discovery to continue from December 28, 2020 to January 14, 2021 as to the IPM Parties only, and that all other expert discovery and dispositive motion hearing deadlines are continued 30 days from the original deadlines as to all parties.

Dated: November 25, 2020

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Robert S. Shwartz

ROBERT S. SHWARTS
Attorneys for Plaintiff
ExamWorks, LLC

STIPULATED AS TO THE RELIEF REQUESTED:

Dated: November 25, 2020

FORD HARRISON LLP

By: /s/ Daniel C. Chammas
(as authorized on 11/25/2020)

DANIEL C. CHAMMAS
Attorneys for Defendants Todd Baldini, L.
Stuart Girard, and Abygail Bird

STATEMENT OF NON-OPPOSITION AS TO THE RELIEF REQUESTED

Dated: November 25, 2020

DOWNEY BRAND LLP

By: /s/ Annie S. Amaral
(as authorized on 11/25/2020)

ANNIE S. AMARAL
Attorneys for Defendant Pamella Tejada

ORDER

After considering the foregoing stipulated request to modify the scheduling order in this case, and good cause appearing, the Court GRANTS the request to modify the scheduling order as follows:

The deadline for joinder of additional parties is continued from December 10, 2020 to January 14, 2021 as to third parties Integrated Pain Management and William George (collectively "IPM Parties").

The deadline for the completion of fact discovery is continued from December 28, 2020 to January 14, 2021 as to third parties the IPM Parties only. The completion for fact discovery as to the parties and third parties other than the IPM Parties will be December 28, 2020.

The deadline for expert disclosures is continued from January 11, 2021 to February 10, 2021 as to all parties.

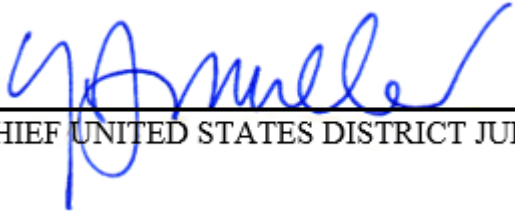
The deadline for rebuttal expert witnesses is continued from February 1, 2021 to March 3, 2021 as to all parties.

The deadline for the completion of expert discovery is continued from February 19, 2021 to March 22, 2021 as to all parties.

The last day for hearing all dispositive motions except for motions for continuances, temporary restraining orders, or other emergency applications is continued from May 7, 2021 to June 18, 2021 as to all parties.

IT IS SO ORDERED.

DATED: December 1, 2020


CHIEF UNITED STATES DISTRICT JUDGE